



March 20, 2023

VIA ECF

Honorable Kenneth M. Karas
United States District Judge
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

MEMORANDUM ENDORSED

Re: *Jackson Gamboa v. Regeneron Pharmaceuticals, Inc.*
Docket No.: 22-cv-10605 (KMK)

Dear Judge Karas:

This firm represents Plaintiffs Jackson Gamboa and Pedro Rocha (collectively as "Plaintiffs"), who brought the above-referenced matter against Defendant Regeneron Pharmaceuticals, Inc. for violations of the New York Labor Law. Plaintiff now writes to request that the Court accept Plaintiffs' previously filed Amended Complaint. *See* D.E. 17.

Pursuant to the Federal Rules of Civil Procedure, "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1). Here, on December 15, 2021, Plaintiffs filed their original Complaint. D.E. 1. Due to a filing error asserted by the SDNY Clerk of Court, on December 16, 2022, Plaintiffs refiled an identical copy of their original Complaint. D.E. 4. On February 28, 2023, Defendant filed its motion for a pre-motion conference in anticipation of its motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). D.E. 15. Because Plaintiffs may file an Amended Complaint as a matter of course and without seeking leave of this Court within 21 days of service of Defendant's motion to dismiss, Fed. R. Civ. P. 15(a)(1), Plaintiffs' deadline to file an Amended Complaint is March 21, 2023. On March 15, 2023, Plaintiffs timely filed their Amended Complaint in accordance with Fed. R. Civ. P. 15 and Your Honor's Individual Rule II(A). Thus, Plaintiffs filed their Amended Complaint within 15 days of Defendant's motion – six days before their deadline to do so. *See* Fed. R. Civ. P. 15(a); D.E. 15-17.

On March 17, 2023, the SDNY Clerk of Court rejected Plaintiffs' Amended Complaint and entered the following explaining its rejection: "the pleading is amended more than once within 21 days after service of the original pleading; Court's leave has not been granted.. [sic] File the Exhibit to Pleading event found under the event list Other Documents and attach either opposing party's written consent or Court's leave." As best as this firm can discern, Plaintiffs believe the SDNY Clerk of Court is mistaking Plaintiffs' refiled Complaint on December 16, 2022 as an Amended Complaint. This is not correct. As established already, Plaintiffs refiled an identical copy of their original Complaint on December 16, 2022 to

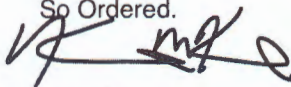
remedy another claimed filing error by the SDNY Clerk of Court. Plaintiffs have not previously filed an Amended Complaint. Plaintiffs filed their first and only Amended Complaint in this action as a matter of course on March 15, 2023. D.E. 17. That Amended Complaint was timely filed under both Fed. R. Civ. 15(a)(1)(B) and Your Honor's Individual Rule II(A). *See* D.E. 15-17.

Accordingly, Plaintiff requests that the Court accept Plaintiffs' previously filed Amended Complaint or, if necessary, provide leave to file Plaintiffs' Amended Complaint.¹

We thank the Court for its kind consideration of this request.

Granted.

So Ordered.


3/20/23

Respectfully submitted,



DAVID D. BARNHORN, ESQ.

C: All Counsel of Record *via* ECF

¹ Additionally, even after this 21-day period, Fed. R. Civ. P. 15(a)(2) mandates that "[t]he court should freely give leave [to file an amended pleading] when justice so requires." Fed. R. Civ. P. 15(a)(2); *Hussain v. Burton & Doyle of Great Neck LLC*, 2015 WL 13227997, at *2 (E.D.N.Y. Sept. 29, 2015), *report and recommendation adopted*, 2016 WL 8711393 (E.D.N.Y. Feb. 26, 2016) (quoting Fed. R. Civ. P. 15(a)(2); and *Assam v. Deer Park Spring Water, Inc.*, 163 F.R.D. 400, 404 (E.D.N.Y. 1995), and citing *Amaya v. Roadhouse Brick Oven Pizza, Inc.*, 285 F.R.D. 251, 253 (E.D.N.Y. 2012)) ("Motions to amend pleadings are governed by Fed. R. Civ. P. 15, which provides that '[t]he court should freely give leave [to amend] when justice so requires.'" and "'Federal Rule of Civil Procedure 15(a) dictates that motions to amend complaints be liberally granted absent a good reason to the contrary....'").